Due Date: May 28, 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	)	
	)	
Inventor: David W. Kelleher	)	Examiner: Khawar Iqbal
	)	
Serial #: 09/689,245	)	Group Art Unit: 2617
	)	
Filed: October 11, 2000	)	Appeal No.: _____
	)	
Title: METHOD AND APPARATUS FOR	)	
CELLULAR INSTANT MESSAGING	)	

BRIEF OF APPELLANTS

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR §41.37, Appellants hereby submit the Appellants' Brief on Appeal from the final rejection in the above-identified application, as set forth in the Office Action dated November 28, 2006 and the Advisory Action dated March 6, 2007.

Please charge the amount of $500.00 to cover the required fee for filing this Appeal Brief as set forth under 37 CFR §41.37(a)(2) and 37 CFR §41.20(b)(2) to Deposit Account No. 50-0494 of Gates & Cooper LLP. Also, please charge any additional fees or credit any overpayments to Deposit Account No. 50-0494.

I. REAL PARTY IN INTEREST

The real party in interest is Cellco Partnership, the assignee of the present application.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences for the above-referenced patent application.

III. STATUS OF CLAIMS

Claims 1, 3, 5-11, 13, 15, 17, 19-25, 27, 29, 31, 33-39, 41, 43, 45, 47, 49, 51, 53, and 61-66 are pending in the application and stand rejected.

Claims 2, 4, 12, 14, 16, 18, 26, 28, 30, 32, 40, 42, 44, 46, 48, 50, 52, and 54-60 have been cancelled.

The rejection of claims 1, 3-11, 13, 15, 17, 19-25, 27, 29, 31, 33-39, 41, 43, 45, 47, 49, 51, 53, and 61-66 are being appealed herein.

IV. STATUS OF AMENDMENTS

Claim 1 was amended subsequent to the final Office Action.

The Advisory Action dated March 6, 2007 fails to indicate whether such amendments were entered into the record.

Per a teleconference on March 19, 2007 between Examiner Iqbal and Jason S. Feldmar, the Examiner indicated that the amendment had been entered into the record.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Briefly, Appellants' invention, as recited in independent claims 1, 11, 15, 25, 29, and 39, is generally directed to an invention that enables cellular phone instant messaging (see page 2, lines 11-12). The different independent claims provide for different formats (method [claims 1 and 11], system [claims 15 and 25], and article of manufacture [claims 29 and 39]) from a server/cell network perspective (claims 1, 15, and 29) and a cell phone perspective (claims 11, 25, and 39). The independent claims provide for a telemetry message that is in the form of a remote feature activation message (see page 7, lines 5-7 and page 8, line 9-page 9, line 4). In addition, the telemetry message

comprises an indication that the cellular phone has been powered on (see page 7, lines 7-9 and 12-20). The remote feature activation message is transmitted from the cellular phone to a foreign cellular network (see page 7, lines 9-11; page 8, line 10-page 9, line 14; FIG. 2, step 802).

The claims further provide for a specific set of steps wherein the telemetry message is transmitted from the cellular phone to a foreign cellular network to a home cellular network (see page 8, line 10-page 9, line 14; FIG. 2). Further, remote feature activation messages are specific types of messages (see page 8, line 10-page 9, line 4). The specific types/forms of remote feature activation messages are also specifically claimed limitations for the independent claims. In this regard, the remote feature activation message is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature (see page 8, lines 10-20; FIG. 2). As a result, the foreign cellular network forwards the message to the phone's home cellular network (see page 8, lines 16-20; FIG. 2). Further, instead of activating/deactivating a feature, the message is used to store information (e.g., a buddy list) regarding the cellular phone in an instant messaging database (see FIG. 2, step 206) transmitting a browser alert to buddies in the buddy list (see page 9, lines 5-14; page 10, lines 5-17; FIG. 2, steps 208-212). Thus, the cellular network enables the instant messaging by interpreting the telemetry message as a remote feature activation message. In this regard, rather than using the telemetry message to activate a feature, the message is used for an entirely different purpose – merely to indicate availability on a network.

In addition, dependent claims 61-66 provide for utilizing a second telemetry message that comprises the standard registration message that a cellular phone forwards to a foreign cellular network prior to being able to place or make any phone calls (see page 7, lines 12-20; FIG. 2).

Additional dependent claims set forth limitations regarding the telemetry message including that the message may be data encoded in a dialed digits field of a message (see page 9, lines 10-12; FIG. 2). As described in the specification at page 8, lines 10-15, such a message may be in the form of a fictitious area code preceded by the star character (*). The message is interpreted by the cellular network as identifying a roaming cellular phone that desires to activate/deactivate a feature (e.g., call forwarding, call waiting, etc.) (see page 8, lines 15-16; FIG. 2). Accordingly, the message is transmitted to the cellular phone's home cellular network (see page 8, lines 16-20; FIG. 2). The home cellular network interprets the message as being available on a cellular network for purposes of instant

messaging. Thus, the remote feature activation message for use in instant messaging is handled by the foreign cellular network similar to standard remote feature activation messages. Yet the remote feature activation of the present invention enables cellular instant messaging.

In view of the above, Appellants note that a significant advantage of the present invention that is set forth in the claims is the use of the remote feature activation message to enable the cellular instant messaging. In this regard, in response to the receipt of the remote feature activation message (as part of the telemetry message), information for instant messaging is stored in a database and used to transmit information to buddies in a instant messaging buddy list. The unique ability to use remote feature activation messages to enable instant messaging is not even remotely disclosed in any of the cited references.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3, and 5-11 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-11, 13, 15, 17, 19-25, 27, 29, 31, 33-39, 41, 43, 45, 47, 49, 51, 53, and 61-66 stand rejected under 35 U.S.C. §103(a) as being rendered obvious by U.S. Publication No. 2002/0173306 to Adamany et al. (Adamany) in view of U.S. Patent No. 6,301,609 to Aravamudan et al. (Aravamudan).

All of the above rejections are being appealed herein.

VII. ARGUMENT

A. Claims 1, 3, and 5-11 – Rejection under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appellants amended independent claim 1 on January 26, 2007. The amendment clarified the antecedent basis issue. Appellants note that such an amendment was to place the application in better condition for Appeal. Further such an amendment rendered the rejection under 35 U.S.C. §112 moot.

Per the teleconference with the Examiner on March 19, 2007, the amendment was entered into the record. Accordingly, the rejection under 35 U.S.C. §112 is moot and has been overcome.

B. Claims 1, 3-11, 13, 15, 17, 19-25, 27, 29, 31, 33-39, 41, 43, 45, 47, 49, 51, 53, and 61-66 – Rejection under 35 U.S.C. §103(a) as being rendered obvious by U.S. Publication No. 2002/0173306 to Adamany et al. (Adamany) in view of U.S. Patent No. 6,301,609 to Aravamudan et al. (Aravamudan).

1. Independent claims 1, 15, and 29

Appellant traverses the above rejections for one or more of the following reasons:

(1) Neither Adamany nor Aravamudan teach, disclose or suggest using a remote feature activation message to initiate or utilize an instant messaging system, or as part of an instant messaging system; and

(2) Neither Adamany nor Aravamudan teach, disclose or suggest a remote feature activation message sent by a cellular phone that is interpreted by a cellular network as a roaming phone desiring to activate/deactivate a feature, which is used to store information utilized in an instant messaging application; and

(3) Neither Adamany nor Aravamudan teach, disclose or suggest a remote feature activation message that indicates that a cellular phone has been powered on.

The Office Action initially relies on Adamany to teach the telemetry message comprising a remote feature activation message that is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature while relying on paragraph 34 and 38.

Paragraph 34 provides:

> [0034] FIG. 1 also illustrates a visited system 14 including a wireless unit 20 that is roaming or visiting in the visited system 14. When the wireless unit 20 is turned on, typically it provides registration information to a base station 22 serving the cell of the visiting system wherein the wireless unit 20 is roaming. The registration information typically includes the mobile identification number (MIN) for the wireless unit 20. The base station 22 generally provides the registration information to a mobile switching center (MSC-V) 24.

Paragraph 38 provides:

> [0038] Assume a subscriber travels from country A to country B and as a roamer desires to use his or her wireless unit for communications between the two countries. Referring to FIG. 2, after start 50, in block 52, the roamer powers-on or turns on his or her wireless unit 20 and generally begins the registration of the wireless unit 20 with a serving MSC (MSC-V) 24 in a visited system 14 of country

> B. In block 54, the MSC-V 24 receives the registration information that is provided by the wireless unit 20, which information typically includes the ESN and MIN of the wireless unit 20. In response to receiving the registration information, the MSC-V 24 generally analyzes the information to the extent the MSC-V 24 determines that the wireless unit 20 is a roaming unit and that the wireless unit 20 is not listed in its visitor's location register (VLR) 26. Also, the MSC-V 24 may consult a roamer access table (RAT) 28. In consulting the RAT, the MSC-V 24 may find an entry 30 in the RAT for the MIN of the wireless unit. The entry 30 may provide the MSC-V 24 with an association between the MIN for the wireless unit 20 and a point code for the international gateway 10. The information relating to the association between the wireless unit's information and the point code of the international gateway 10 generally results from a relationship established and based on the roamer's subscription for wireless service from a service provider that is a customer or otherwise affiliated with the international gateway 10 or provider of international gateway services. Thus, the RAT table 28 in the MSC-V 24 may be set up with the point code of the international gateway 10 associated with the visiting subscriber's MIN range in the VLR 26 of the MSC-V 24.

As can be seen, paragraph 34 merely describes that when a unit is turned on, registration information is provided to a base station which in turn provides the registration information to a mobile switching center.

Paragraph 38 provides that when a roaming phone turns on the phone, the phone is registered with a serving mobile switching center. The MSC determines that it is a roaming phone and consults a roamer access table for a connection between the phone and an international gateway.

Thus, as can be clearly seen from the above paragraphs and the remainder of Adamany, Adamany merely describes the standard use and registration of a roaming phone in a foreign network. Such a teaching is not even remotely similar to that used and claimed in the present invention. In the present invention, rather than the power on merely sending the standard registration message (as in Adamany), the power on of the phone is processed as a remote feature activation message. Since it appears as a remote feature activation message, the foreign network merely forwards it to the home network which then uses the message to establish instant messaging (i.e., by storing information in an instant messaging database, using a buddy list, and transmitting a browser alert to a buddy identified in the buddy list). In addition, Appellants note that the standard registration message may also be transmitted (as set forth in dependent claims 61-66 and described in further detail below).

Again, Adamany merely describes the standard roaming cellular phone functionality. What is different about the present invention is the use of such information that appears as a remote feature activation message but is actually used to establish instant messaging.

The Action attempts to combine Adamany with Aravamudan stating that Aravamudan teaches the transmission of a browser alert to relevant buddies identified in the buddy list. Appellants submit that not only is there a complete failure of any showing of a motivation to combine, but even if the two references were combined, the present invention would not result.

Aravamudan merely describes a unified messaging solution and services platform that utilizes the features and capabilities associated with instant messaging to locate a registered user, query the user for a proposed message disposition, and coordinate services among a plurality of communication devices, modes, and channels. A user proxy is registered to the user as a personal communication services platform. The user is able to define various rules for responding to received data and communications, the rules stored within a rules database servicing the communication services platform. Instant messaging is used for communications between the user and the communication services platform's user proxy (see Abstract).

However, as admitted in the prior Office Actions, Aravamudan fails to teach the interpretation of the remote feature activation message as a roaming cellular phone desiring to activate/deactivate a feature. In addition, as described above, there is no teaching of the unusual and unique use and combination of the remote feature activation message in an instant messaging context (as claimed).

Appellants note that it is the combination of the elements of the invention that contribute to the unique and nonobvious nature of the invention. In this regard, none of the cited prior art has even remotely considered using a remote feature activation message to act in a manner out of the standard use. More specifically, none of the cited prior art has described, considered, or suggested the use of a remote feature activation message that is used so that the message is forwarded to a home cellular network where it is interpreted and used to enable instant messaging. In this regard, the Office Action is combining the two references without any consideration of why or how the services would work together.

The motivation provided in the Office Action is:

> The user's real presence is therefore advertised to others who have identified the user as a buddy. However, when the user is off-line, all others who have identified the user as a buddy are notified that the user is not online and is not available. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Adamany et al by specifically adding transmitting a browser alert to one or more relevant buddies identified in the buddy list feature in order to enhance system performance to user can maintain control his online

> presence and activities, enabling the associate with directly interface with the user when the user is online as taught by Aravamudan et al.

However, Appellants note that such a motivation is illogical and lacks sufficient basis on its face. In this regard, Adamany does not relate to instant messaging whatsoever nor does it describe the use of a remote feature activation message for anything other than the standard use. Further, since Adamany does not relate to nor describe or remotely allude to instant messaging, there would be no need or desire to add a browser alert to the system of Adamany.

Further, since Adamany fails to teach the use of a remote feature activation message for anything other than the standard use, even if Adamany were combined with Aravamudan, the result would not be use claimed use of the remote feature activation message to enable instant messaging.

The above arguments were submitted in response to the final Office Action. In reply, the Advisory Action provides:

> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant's arguments filed 01-30-07 have been fully considered but they are not persuasive. The examiner has thoroughly reviewed applicant's arguments but firmly believes that the cited references reasonably and properly meet the claimed limitations. In regard to applicant's arguments against Adamany et al and Aravamudan et al, Adamany et al teaches, user as roamer turns on a cellular phone 20, registration messages are transmitted from the roamer cellular phone 20, roamer cellular phone 20 send a registration notification message containing the roamer cellular phone's 20 MIN and ESN (see table 1) to register for the MSC- V 24 (visited system 14) to international gateway 10 to MSC-H 18 (home system). MSC-H 18 checks out the new message with respect to the roamer cellular phone 20 by checking whether the roamer cellular phone 20 is valid. If the roamer cellular phone 20 is invalid (deactivated a feature), the MSC-H 18 creates a response to the new message including a denial of roaming. On the other hand, if the roamer cellular phone 20 is valid, the MSC-H 18 creates a response to the new message including allowance (calling features)(activated a feature) of roaming. Generally, the response includes the point code of the MSC-H 18 as the originating point code and the point code of the international gateway 10 as the destination point code. The response generally is a Registration Notification Return message. Aravamudan et al teaches the home cellular network receiving the telemetry message, storing information regarding the first cellular phone in an instant messaging database, wherein the information comprises a list and transmitting a browser alert to one or more relevant buddies identified in the buddy list. Aravamudan et al also discloses using features and capabilities associated with instant messaging to locate a registered user, query the user for a proposed message disposition, and coordinate services among a plurality of communication devices, modes, and channels. A user proxy is registered to the user as a personal communication services platform. The user is able to define various rules for responding to received data and communications. The rules are stored within a rules database servicing the communication services platform. Instant messaging is used for communications between the user and the communication services platform's user proxy (col. 5, line 1-30, col. 7 lines 1-40, col. 8, lines 35-45, col. 8, line 60-col. 9, line 25, col. 10, lines 1-15). The applicant argues on page 15, lines 7-20 that "Applicant traverses the above rejections for one or more of the following reasons: (1) Neither Adamany nor Aravamudan teach, disclose or suggest using a remote feature activation message to initiate or utilize an instant messaging system, or as part of an instant messaging system; (2) Neither Adamany nor Aravamudan teach, disclose or suggest a remote

> feature activation message sent by a cellular phone that is interpreted by a cellular network as a roaming phone desiring to activateldeactivate a feature, which is used to store information utilized in an instant messaging application; ." Examiner agrees with this argument. However, the applicant didn't claim..

Appellants disagree with and traverse the above assertions. The Advisory Action begins with a statement regarding Adamany's teaching of the standard use of registration messages. As stated above, such a standard use is not what the current invention claims. Instead, the remote feature activation message is "interpreted" by a foreign network as a roaming phone desiring to activate/deactivate a feature but the system uses the message to enable instant messaging. Such a use is wholly outside of the scope of Adamany. The Advisory Action discusses how a roaming phone can be denied roaming capabilities. Again, such a denial serves to actually teach away from the present invention since if service is denied, there would be no instant messaging in the invention is claimed.

The Advisory Action then leaps over to Aravamudan and describes the storing of the message in an instant messaging database. Again, as stated above, there is no nexus or logical reason for combining Adamany with Aravamudan. Further, even if combined, the present invention would not result. In this regard, only through impermissible hindsight would the present invention result.

Lastly, the Advisory Action restates Appellant's prior arguments but asserts that Appellants failed to claim such limitations. Appellants respectfully disagree and traverse such an assertion. Appellants' first argument asserted that neither Adamany nor Aravamudan teach, disclose, or suggest using a remote feature activation message to in initiate or utilize an instant messaging system, or as part of an instant messaging system. All of the independent claims explicitly provide for the use of a remote feature activation message (see e.g., claim 1(a)(iii), claim 11(a)(ii), claim 15(d)(i), claim 25(a)(ii), claim 29(a)(iii), claim 39(a)(ii)). In addition, all of the claims explicitly recite a transmission to buddies in a buddy list (which is clearly part of an instant messaging system (see e.g., claim 1(c), claim 11(b), 15(d)(ii), 25(b), 29(b) and (c), 39(b)). In addition, some of the independent claims explicitly recite the storage in an instant messaging database (see e.g., claim 1(b), 15(a), 29(b)). Thus, Appellants submit the first argument is clearly set forth in explicit claim limitations.

The second argument was that neither Adamany nor Aravamudan teach, disclose or suggest a remote feature activation message sent by a cellular phone that is interpreted by a cellular network

as a roaming phone desiring to activate/deactivate a feature, which is used to store information utilized in an instant messaging application. Appellants again refer the explicit claim limitations in claims 1(b), 15(a), and 29(b) which provide for an instant messaging database and the storage of information in such a database. Thus, contrary to the Examiner's assertions, such limitations are explicitly claimed.

The third argument provides that neither Adamany nor Aravamudan teach, disclose or suggest a remote feature activation message that indicates that a cellular phone has been powered on. All of the independent claims explicitly provide for such a limitations (see e.g., claim 1(a)(i), claim 11(a)(i), claim 15(d)(i), claim 25(a)(i), claim 29(a)(ii), and claim 39(a)(i)). Thus, contrary to the Examiner's assertion, such limitations are explicitly claimed.

In view of the above, Appellants respectfully request reversal of the rejections. In addition, Appellants note that the dependent claims provide further limitations that clearly serve to distinguish both the independent and dependent claims as set forth in detail below.

2. Independent Claims 11, 25, and 39

These independent claims contain the same limitations as independent claims 1, 15, and 29 but for the instant messaging database limitations. Accordingly, Appellants reassert and refer the board to the arguments set forth above but for the argument based on the instant messaging database limitation. For these reasons, Appellants respectfully request reversal of the rejections.

3. Dependent Claims 3, 13, 17, 27, 31, and 41 are Not Separately Argued

4. Dependent Claims 5, 19, and 33

These dependent claims provide that the instant messaging database is maintained by an instant messaging partner. Such an instant messaging partner is described on page 9, lines 5-14 wherein examples of such partners include America OnLine, MSN, or Yahoo. Accordingly, such an instant messaging partner is an online network provider. Nowhere in Aravamudan is such an instant messaging partner described or suggested. Instead, the text of Aravamudan merely describes an entity that controls a communication services platform (CSP) (see col. 4, lines 30-53) and a services

executive 164 (see col. 5, line 52-col. 6, line 31) which is not even remotely related to an instant messaging partner as claimed, as set forth in the specification, or as understood in the art.

5. Dependent Claims 6, 20, and 34 Are Not Separately Argued

6. Dependent Claims 7, 21, and 35

These dependent claims provide that the relevant buddies that receive the browser alert are cellular phones that have the first cellular phone on the buddy list. In rejecting these claims, the Office Action relies on Aravamudan col. 4, lines 30-45, col. 6, lines 10-65, and claim 1. However, such text does not even remotely describe cellular phones that have another cellular phone on their buddy list.

Again, this invention is explicitly directed towards utilizing instant messaging across a cellular network. These dependent claims provide specific details regarding such capabilities. The cited references completely fail to even remotely describe or allude to such explicitly claimed limitations. Accordingly, Appellants respectfully request reversal of the rejections.

7. Dependent Claims 8, 22, and 36 Are Not Separately Argued

8. Dependent Claims 9, 23, and 37 Are Not Separately Argued

9. Dependent Claims 10, 24, and 38

These dependent claims provide for utilizing a short message service to deliver text messages using the cellular phone. In rejecting these claims, the Office Action merely relies on Aravamudan col. 6, lines 10-65 and claim 1. Such text of Aravamudan merely describes a personal and rules database containing client data. Such text further describes a communications services platform and instant messaging server. However, what is notoriously lacking from such a description is even a remote suggestion of a short message service (SMS) or a text message as claimed. In this regard, a SMS is a particular type of service that has a particular well understood meaning in the art. There is not even a remote reference to such a use or meaning in Aravamudan. More particularly, the cellular

network services and architecture and not described in Aravamudan. An SMS is used in such an architecture. In addition, separate electronic searches of Aravamudan for the terms "SMS" and "short" provide no results whatsoever. Without even mentioning such terminology, Aravamudan cannot possibly render such explicit claim limitations obvious.

In view of the above, Appellants respectfully request reversal of these claims.

10. Dependent Claims 43, 45, 47, 49, 51, and 53

These dependent claims provide that the remote feature activation message comprises data encoded in a dialed digits field of a message. In rejecting these claims, the Office Action merely cites Aravamudan col. 6, lines 10-65. However, nowhere in such text is there even a remote suggestion, explicit or implicit, of the dialed digits field of a message. Such text completely fails to discuss or describe such a capability or feature. In addition, an electronic search of Aravamudan for the term "dial" provides no results. Further, separate electronic searches for the terms "digit" and "field" provide no relevant results.

Again, the invention is directed towards instant messaging on a cellular network. Such capabilities are neither taught nor suggested by the cited references. These dependent claims provider detailed claim limitations that used in and enable such capabilities. Aravamudan does not and cannot teach such limitations because Aravamudan is not concerned with such an environment or capabilities.

In view of the above, Appellants respectfully request reversal of the rejections.

11. Dependent Claims 61-66

These dependent claims provide for sending an additional second message for the registration of the cellular phone on a foreign network. Thus, as explicitly claimed, two separate messages are sent. Such separate messages serve to clearly differentiate the cited prior art. Further, the use of such a dependent claim illustrates that the power on message (recited in the independent claims) is not the standard message that is transmitted but is part of the instant messaging system that is enabled by the invention. Thus, such dependent claims further differentiate the present invention from the cited references. Again, rather than the only the power-up message registration

being transmitted (as in the independent claims), these dependent claims (in combination with the independent claims) provide that there are two messages that are transmitted – (1) the standard registration message, and (2) the remote feature activation message. Such a use of two messages establishes that the instant messaging is enabled through more than the mere standard registration message but requires a second remote feature activation message that may be transmitted at the time the first cellular phone has been powered on.

In rejecting claims 61-66, the Office Action merely relies on paragraphs 38 and 42-43 of Adamany. However, these paragraphs completely and entirely fail to teach, describe, or remotely allude to the use of two messages. Instead, such paragraphs (and the remainder of Adamany) merely describe the single registration message that transmitted at the time of powerup. Consequently, Adamany cannot and does not teach the two separate messages that are set forth in both the dependent and independent claims (both of which may arise from the power on sequence).

Appellants note that the Office Action merely recites the use of the single registration message to teach both claim limitations (i.e., the first message recited in the independent claims and the registration message recited in these dependent claims). However, the claims set forth two independent messages that are transmitted. It is logically impossible for Adamany's single message to teach both messages as claimed (since the claims clearly recite two messages).

In addition, without teaching the two messages, the combination of the cited references cannot possibly teach or render the claimed invention obvious.

In view of the above, Appellants respectfully request reversal of the rejections.

C. Conclusion

In light of the above arguments, Appellants respectfully submit that the cited references do not anticipate nor render obvious the claimed invention. More specifically, Appellants' claims recite novel physical features which patentably distinguish over any and all references under 35 U.S.C. §§ 102 and 103. As a result, a decision by the Board of Patent Appeals and Interferences reversing the Examiner and directing allowance of the pending claims in the subject application is respectfully solicited.

Respectfully submitted,

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G&C 139.142-US-U1

CLAIMS APPENDIX

1. A method for enabling cellular instant messaging comprising:

(a) receiving, in a cellular phone's home cellular network, a telemetry message from a foreign cellular network, wherein:

(i) the telemetry message was originally transmitted from a first cellular phone to the foreign cellular network;

(i) the telemetry message comprises an indication that the first cellular phone has been powered on; and

(ii) the telemetry message comprises a remote feature activation message that is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature;

(b) in response to the home cellular network receiving the telemetry message, storing information regarding the first cellular phone in an instant messaging database, wherein the information comprises a buddy list; and

(c) transmitting a browser alert to one or more relevant buddies identified in the buddy list.

2. (CANCELLED)

3. The method of claim 1 wherein the telemetry message further comprises a registration notification message.

4. (CANCELLED)

5. The method of claim 1 wherein the instant messaging database is maintained by an instant messaging partner.

6. The method of claim 1 wherein the information further comprises a customer's profile for the first cellular phone.

7. The method of claim 1 wherein the one or more relevant buddies comprise one or more cellular phones that have the first cellular phone on the buddy list.

8. The method of claim 1 wherein the one or more relevant buddies comprise buddies on the first cellular phone's buddy list.

9. The method of claim 1 wherein the one or more relevant buddies comprise computers connected to the Internet.

10. The method of claim 1 further comprising utilizing a short message service to deliver text messages using the first cellular phone.

11. A method for enabling cellular instant messaging comprising:

(a) transmitting, from a first cellular phone to a foreign cellular network, a telemetry message, wherein:

(i) the telemetry message comprises an indication that the first cellular phone has been powered on; and

(ii) the telemetry message comprises a remote feature activation message wherein the remote feature activation message is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature, and wherein the foreign cellular network forwards the telemetry message to the first cellular phone's home cellular network; and

(b) receiving a browser alert, on the first cellular phone, indicating availability of buddies on a buddy list of the first cellular phone.

12. (CANCELLED)

13. The method of claim 11 wherein the telemetry message further comprises a registration notification message.

14. (CANCELLED)

15. A system for enabling cellular instant messaging comprising:

(a) an instant messaging database configured to maintain information regarding a first cellular phone, wherein the information comprises a buddy list;

(b) a home cellular network;

(c) a foreign cellular network; and

(d) a server, on the home cellular network, configured to:

(i) receive a telemetry message comprising a remote feature activation message from the foreign cellular network, wherein the telemetry message was originally transmitted from the first cellular phone, wherein the telemetry message indicates that the first cellular phone has been powered on, and wherein the remote feature activation message is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature; and

(ii) transmit, in response to home cellular network receiving the telemetry message, a browser alert to one or more relevant buddies identified in the buddy list.

16. (CANCELLED)

17. The system of claim 15 wherein the telemetry message further comprises a registration notification message.

18. (CANCELLED)

19. The system of claim 15 further comprising an instant messaging partner that is configured to maintain the instant messaging database.

20. The system of claim 15 wherein the information further comprises a customer's profile for the first cellular phone.

21. The system of claim 15 wherein the one or more relevant buddies comprise one or more cellular phones that have the first cellular phone on the buddy list.

22. The system of claim 15 wherein the one or more relevant buddies comprise buddies on the first cellular phone's buddy list.

23. The system of claim 15 wherein the one or more relevant buddies comprise computers connected to the Internet.

24. The system of claim 15 wherein the server is further configured to utilize a short message service to deliver text messages using the first cellular phone.

25. A system for enabling cellular instant messaging comprising a first cellular phone configured to:

(a) transmit, to a foreign cellular network, a telemetry message, wherein:

(i) the telemetry message comprises an indication that the first cellular phone has been powered on; and

(ii) the telemetry message comprises a remote feature activation message, and wherein the remote feature activation message is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature, and wherein the foreign cellular network forwards the telemetry message to the first cellular phone's home cellular network;

(b) receive a browser alert indicating availability of buddies on a buddy list of the first cellular phone.

26. (CANCELLED)

27. The system of claim 25 wherein the telemetry message further comprises a registration notification message.

28. (CANCELLED)

29. An article of manufacture comprising a program storage medium readable by a computer hardware device and embodying one or more instructions executable by the computer hardware device to perform a method for enabling cellular instant messaging, the method comprising:

(a) receiving, in a home cellular network, a telemetry message, from a foreign cellular network, wherein:

(i) the telemetry message was originally transmitted from a first cellular phone, to the foreign cellular network;

(ii) the telemetry message comprises an indication that the first cellular phone has been powered on; and

(iii) the telemetry message comprises a remote feature activation message, and wherein the remote feature activation message is interpreted by the foreign cellular network as a roaming cellular phone desiring to activate/deactivate a feature;

(b) in response to the home cellular network receiving the telemetry message, storing information regarding the first cellular phone in an instant messaging database, wherein the information comprises a buddy list; and

(c) the home cellular network transmitting a browser alert to one or more relevant buddies identified in the buddy list.

30. (CANCELLED)

31. The article of manufacture of claim 29 wherein the telemetry message further comprises a registration notification message.

32. (CANCELLED)

33. The article of manufacture of claim 29 wherein the instant messaging database is maintained by an instant messaging partner.

34. The article of manufacture of claim 29 wherein the information further comprises a customer's profile for the first cellular phone.

35. The article of manufacture of claim 29 wherein the one or more relevant buddies comprise one or more cellular phones that have the first cellular phone on the buddy list.

36. The article of manufacture of claim 29 wherein the one or more relevant buddies comprise buddies on the first cellular phone's buddy list.

37. The article of manufacture of claim 29 wherein the one or more relevant buddies comprise computers connected to the Internet.

38. The article of manufacture of claim 29, the method further comprising utilizing a short message service to deliver text messages using the first cellular phone.

39. An article of manufacture comprising a program storage medium readable by a computer hardware device and embodying one or more instructions executable by the computer hardware device to perform a method for enabling cellular instant messaging, the method comprising:

(a) transmitting to a foreign cellular network, from a first cellular phone, a telemetry message, wherein:

(i) the telemetry message comprises an indication that the first cellular phone has been powered on; and

(ii) the telemetry messages comprises a remote feature activation message, wherein the remote feature activation message is interpreted by the cellular network as a roaming cellular phone desiring to activate/deactivate a feature, and wherein the foreign cellular network forwards the telemetry message to the first cellular phone's home cellular network;

(b) receiving a browser alert, on the first cellular phone, indicating availability of buddies on a buddy list of the first cellular phone.

40. (CANCELLED)

41. The article of manufacture of claim 39 wherein the telemetry message further comprises a registration notification message.

42. (CANCELLED)

43. The method of claim 1 wherein the remote feature activation message comprises data encoded in a dialed digits field of a message.

44. (CANCELLED)

45. The method of claim 11 wherein the remote feature activation message comprises data encoded in a dialed digits field of a message.

46. (CANCELLED)

47. The system of claim 15 wherein the remote feature activation message comprises data encoded in a dialed digits field of a message.

48. (CANCELLED)

49. The system of claim 25 wherein the remote feature activation message comprises data encoded in a dialed digits field of a message.

50. (CANCELLED)

51. The article of manufacture of claim 29 wherein the remote feature activation message comprises data encoded in a dialed digits field of a message.

52. (CANCELLED)

53. The article of manufacture of claim 39 wherein the remote feature activation message comprises data encoded in a dialed digits field of a message.

54. (CANCELLED)

55-60. (CANCELLED)

61. The method of claim 1 further comprising, receiving in the cellular phone's home cellular network, a second telemetry message from a foreign cellular network, wherein the second telemetry message comprises a standard registration message originally transmitted from the first cellular phone to the foreign cellular network.

62. The method of claim 11 further comprising, transmitting, from the first cellular phone to the foreign cellular network, a second telemetry message, wherein the second telemetry message comprises a standard registration message that will be forwarded by the foreign cellular network to the home cellular network.

63. The system of claim 15, wherein the server is further configured to receive, a second telemetry message from the foreign cellular network, wherein the second telemetry message comprises a standard registration message originally transmitted from the first cellular phone to the foreign cellular network.

64. The system of claim 25, wherein the first cellular phone is further configured to transmit a second telemetry message to the foreign cellular network, wherein the second telemetry message comprises a standard registration message that will be forwarded by the foreign cellular network to the home cellular network.

65. The article of manufacture of claim 29, wherein the method further comprises: receiving in the cellular phone's home cellular network, a second telemetry message from the foreign cellular network, wherein the second telemetry message comprises a standard registration message originally transmitted from the first cellular phone to the foreign cellular network.

66. The article of manufacture of claim 39, wherein the method further comprises transmitting, from the first cellular phone to the foreign cellular network, a second telemetry message, wherein the second telemetry message comprises a standard registration message that will be forwarded by the foreign cellular network to the home cellular network.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.